UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
6th meeting
held on
Friday, 27 September 1996
at 10 a.m.
New York

SUMMARY RECORD OF THE 6th MEETING

Chairman: Mr. ESCOVAR SALOM (Venezuela)

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Distr. GENERAL
A/C.6/51/SR.6
14 November 1996
ENGLISH
ORIGINAL: FRENCH

96-81231 (E)

The meeting was called to order at 10.05 a.m.

AGENDA ITEM 150: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/51/33, A/51/317)

1. Mr. WANG Xuexian (China) said that the consideration on a priority basis for the fourth year running of the item on assistance to third States affected by the application of sanctions under Chapter VII of the Charter reflected the growing concern of Member States over the frequent use by the Security Council of sanctions regimes, which had affected a growing number of countries.

2. It had been the consistent position of the Chinese Government that sanctions should not be used as a major means of settling disputes, because they caused serious difficulties to the economies of third States, especially those of the developing countries. It was also imperative for States thus affected by the implementation of sanctions to be able to exercise their right to consult the Security Council, in accordance with Article 50 of the Charter.

3. The United Nations should therefore make the necessary arrangements and take expedient measures to assist the affected States in overcoming the problems they faced. To that end, it should give priority to the most direct and prompt methods. Where that was not possible, long-term assistance and cooperation should be provided (cooperative projects, including credit plans) which could also enhance the ability of affected States to deal with the adverse consequences of sanctions. In that regard, the working paper submitted by the Russian Federation on the subject, which reflected quite comprehensively the various problems that had arisen in the course of the implementation of sanctions, as well as a variety of factors that should be taken into account in resolving them, was an important reference document which would facilitate the Committee's consideration of the item.

4. China also considered constructive the proposal put forward by Sierra Leone for the establishment of a dispute settlement service offering or responding with its services early in disputes. Although the Charter of the United Nations provided that parties should settle their disputes by peaceful means, the Organization lacked the corresponding mechanisms to facilitate such settlement. Nevertheless, advanced warning and settlement services were likely to reduce the frequency of recourse to measures such as the imposition of sanctions. In the light of the further explanations given by Sierra Leone, as well as the observations and recommendations offered by Member States, China was of the opinion that the proposal in question merited further study by the Special Committee.

5. The Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council were two publications that were indispensable to States and to the Organization, in that they facilitated the examination of the Organization's work and policies, thereby enhancing the effectiveness of its work, even though the completion of their preparation posed numerous difficulties in terms of human and financial resources. His delegation hoped that the Secretariat would make all appropriate arrangements so that the

compilation of those two documents could be completed and their quality guaranteed.

6. At its 1996 session, the Special Committee was for the first time open to all Member States, which, through their direct participation in its work, would help to instill new energy into the Committee, thereby permitting it to consider the new proposals that would continue to be advanced on the revision of the Charter and the reform of the United Nations. China was convinced that as long as delegations continued to actively participate in the debates of the Special Committee on the basis of cooperation and consensus, its work would surely be crowned with success.

7. Ms. HAKIM (Indonesia) said that the commemoration of the fiftieth anniversary of the United Nations had given rise to great optimism and hope in Member States and had offered them an opportunity to rededicate themselves to the principles and objectives of the Charter of the United Nations. However, even though the fundamental changes that had taken place on the international scene revived hopes for a new era of peace, justice and prosperity, the international community must overcome a series of unprecedented challenges and many uncertainties and contradictions.

8. In that context, it was important to revitalize and democratize the United Nations system. The strengthening of the role of the Organization should begin by the strengthening of the role of the General Assembly, which, as a universal forum for all Member States, should be the highest authority responsible for the maintenance of international peace and security as well as cooperation for development. It was the General Assembly that should provide guidance to the Security Council and play a central role in the reform process. In that regard, the Indonesian delegation welcomed the progress achieved so far in the revitalization of the Assembly, including the reorganization of the Main Committees.

9. With regard to the Security Council, it was even more urgent to enlarge its membership as a large number of States had become Members of the Organization since the previous review of the Council three decades previously. Such enlargement should accommodate the interests and needs of the developing countries, which comprised the overwhelming majority of Member States, and take into consideration certain other criteria, such as a State's capability and record of contributing to the maintenance of international peace and security. It was not sufficient, however, to increase the number of members of the Council. The latter should also adhere to the principles of transparency, legitimacy, accountability and efficiency in the discharge of its mandate. In that connection, she hoped that the efforts of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council would lead to concrete reform.

10. In the position paper issued on the fiftieth anniversary of the United Nations (A/50/60-S/1995/1), the Secretary-General had referred to the ramifications of the imposition of sanctions for the target countries and for third States. More often than not, the costs were being borne by the civilian population, and the objectives of the sanctions were not being accomplished. Against that backdrop, at its 1996 session, the Special Committee had accorded

primordial importance to the question of assistance to third States affected by the application of sanctions. In that regard, in order to implement the provisions of General Assembly resolution 50/51, which had, inter alia, underlined the importance of consultations under Article 50 of the Charter, the Security Council should try to enhance the effectiveness of its working methods. Her delegation appreciated the measures taken by the sanctions committees to increase the effectiveness and transparency of their work, in particular by facilitating access to them by States experiencing special economic problems because of the imposition of sanctions.

11. The General Assembly, the Economic and Social Council and the Committee for Programme and Coordination, for their part, were also of the utmost importance in mobilizing international support for affected third States. Other United Nations bodies, international financial institutions and international and regional organizations should contribute their efforts by holding meetings on the matter.

12. Her delegation also welcomed the arrangements which had been decided on by the Secretariat in connection with paragraph 3 of General Assembly resolution 50/51 to support the work of the Security Council. It approved the guidelines proposed by the Secretary-General in his report entitled "Implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions" (A/51/317), in particular the proposal to develop a methodology for assessing the consequences of sanctions. It also felt that the working paper presented by the Russian Federation merited further consideration.

13. With regard to the role played by the Organization in the maintenance of international peace and security, her delegation welcomed the working papers presented by the Libyan Arab Jamahiriya, Cuba and Sierra Leone.

14. As to the future work of the Special Committee, her delegation had noted with interest the working paper of the Russian Federation entitled "Draft declaration on the basic principles and criteria for the work of the United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts".

15. Mr. RODRIGUEZ CEDEÑO (Venezuela) said that while sanctions were important, they should not be regarded as the only instrument, less still as a primary instrument for the purposes of the maintenance of international peace and security. Instead, in the face of grave violations of international law which could lead to a breach of international peace and security, other means of settlement should be sought before resorting to sanctions.

16. With regard to the application of sanctions as such, his delegation also felt that, while General Assembly resolution 50/51 provided important guidelines which should underpin the consideration of the issue, the matter needed to be studied in greater depth. In that context, it was important to reflect on the effects sanctions might have for third States and the measures needed to alleviate them, and there was no need to invoke any obligation to justify such consideration. The situation was quite different from that which arose in the context of State responsibility and the corresponding obligation to make reparation. It would be preferable to try to establish effective follow-up

machinery and adopt effective and timely measures to prevent repercussions on third States of sanctions adopted by the Security Council.

17. While the Charter of the United Nations placed an obligation on the Security Council, the organ which adopted sanctions, to seek a practical, rapid and effective solution in such cases, other bodies of the Organization and international organizations, in particular those concerned with finance and aid, could also provide assistance to a mechanism designed to prevent or lessen the effects of sanctions. It was vitally important that the Security Council should first consider the effects that sanctions might have for third States in order to be able to decide on the most appropriate preventive measures and monitor their impact on those States.

18. In that respect, the working paper which the Russian Federation had submitted on the question contained very interesting aspects, although the concept of the "humanitarian limits" of sanctions seemed to be beyond the scope of the question and of the Special Committee's mandate.

19. The working papers presented by the Libyan Arab Jamahiriya and Cuba regarding the strengthening of the role of the United Nations in the maintenance of international peace and security deserved close study.

20. The proposal by the Sierra Leonean delegation to establish a dispute settlement service offering or responding with its services early in disputes could be very useful in the prevention and settlement of international disputes. However no mechanism or means of that type, whether legal or political, could operate without the consent of States. Moreover, the administrative and budgetary implications would have to be carefully considered in order to draw up a realistic and, hence, viable, proposal.

21. His delegation stressed the importance of updating and regularly publishing the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council, since those publications undoubtedly facilitated the study of the Organization and its functions, promoted the increased participation of States in its work and showed the evolution of the internal system of justice in the Organization. To that end, the idea of outsourcing was of interest.

22. With regard to the future work of the Special Committee, the draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts submitted by the Russian Federation should be carefully studied in order to draw up a complete, precise and innovative text in an area which was so important for the establishment and maintenance of international peace and security.

23. The Special Committee was an essential body which had an important role to play in the context of the ongoing reform of the Organization and was best placed to consider the legal questions raised by that reform in the context of strengthening the United Nations system.

24. Mrs. FLORES (Mexico) said that the Special Committee which, by the many instruments it had drawn up over the years, had helped fill great gaps in international law and the conduct of relations among States, could contribute effectively to the reform and modernization of the United Nations. In that respect, her delegation agreed with the representative of Portugal that the possibility should be considered of establishing mechanisms and means of communication which would enable the Committee to cooperate with the various working groups which were working to reform the Organization and make its experience and legal skills available to them.

25. With regard to sanctions imposed under Chapter VII of the Charter of the United Nations, her delegation stressed the importance it attached to ensuring transparency in their elaboration and making objective evaluations of them at regular intervals, determining their specific objectives and taking into account their possible repercussions on third States at the time of their adoption.

26. While acknowledging that the Organization faced financial difficulties, her delegation urged the Secretariat to make every effort to update the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council and to publish the overdue editions of those publications, which were a valuable means of preserving the institutional memory of the Organization.

27. The Trusteeship Council had duly accomplished the mission assigned to it in the Charter, and there was no reason for its continued existence. Therefore, her delegation still shared the Secretary-General's view that that body should be abolished. Moreover, since the Special Committee had already considered the issue, all proposals concerning the Trusteeship Council should be referred to it.

28. In the process of reforming and modernizing the United Nations, the International Court of Justice, which marked its fiftieth anniversary in 1996, should not be overlooked. Her delegation felt that that anniversary provided an opportunity to consider ways of giving the Court new impetus as the Organization's principal judicial organ and of adapting it to new international realities. In that connection, the Special Committee, which consisted of jurists, was in the best position to reflect on that issue and on the revitalization of the other subsidiary bodies of the United Nations that dealt with legal issues.

29. Lastly, in view of the Organization's financial crisis, the Special Committee should try to rationalize its methods of work and to take full advantage of available resources. To that end, it should carefully review its programme of work, delete the items which held little interest or which were already dealt with in other forums and focus on the consideration of issues which were likely to make a real contribution to the strengthening of the United Nations.

30. Mr. CHIMIMBA (Malawi) recalled that the framers of the Charter of the United Nations had intended that third States confronted with special economic problems as a result of preventive or enforcement measures against another State should be assisted by the Security Council, regardless of whether they were

Members of the United Nations. In its day, the Collective Measures Committee had clearly indicated the problems that could result from the effective application of economic measures if some countries either withheld their cooperation or failed to apply the measures effectively. Its work should be the point of departure for any discussion on the topic.

31. With respect to General Assembly resolution 50/51, it would be desirable, as recommended by the Collective Measures Committee, for the specialized agencies and other international organizations to participate in its implementation.

32. It was true that, until the 1970s, the Security Council had never had the opportunity to deal with a situation like the one envisaged by Article 50 of the Charter. Its appeal to Member States, in 1973, for technical, financial and material assistance to Zambia had not met with an adequate response. The Special Committee should help to elaborate mechanisms to avoid the recurrence of such situations, thereby strengthening the sanctions regime.

33. In that connection, Malawi had already supported the establishment of a trust fund. The Security Council and the specialized agencies or the Bretton Woods institutions could make arrangements to assist the affected countries, taking into account the fact that no two cases were exactly alike. The Special Committee should give further consideration to that proposal, and should also consider the possibility of treating compliance by a Member State with a sanctions regime as a contribution to peacekeeping, so that any special economic problems encountered in terms of Article 50 would be treated as expenses chargeable to the Organization; in the past, the International Court of Justice and the Legal Counsel had given opinions that tended to uphold the legality of that proposal.

34. Lastly, since the subgroup on the question of United Nations-imposed sanctions seemed to have left the question of the implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions to the Special Committee, Malawi urged the latter to consider the issue as a matter of priority.

35. Mrs. BAYKAL (Turkey) said that the provisions of the Charter of the United Nations, as they stood, were insufficient to address the needs of third States affected by the application of sanctions under Chapter VII. In fact, only a few of those provisions dealt with the issue. Therefore, Member States must agree on new measures and on ways and means to implement the existing provisions.

36. The resolution adopted by the General Assembly, at its fiftieth session, on the implementation of Charter provisions related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter was a step forward in that regard, as was the report prepared by the Secretary-General (A/51/317) in accordance with paragraph 4 of that resolution. The guidelines proposed in that report on technical procedures to be used by the Secretariat, especially those concerning impact assessment, could be very helpful not only in assessing or identifying the actual damage suffered by third States, but also in identifying practical ways of assisting the affected States. However, the fact

that impact assessment processes were initiated by the Security Council limited the participation of the third States most likely to be affected by sanctions.

37. The Sixth Committee should not lose sight of one of the main purposes of its discussions: namely, to facilitate the involvement of third States in the decision-making process concerning both sanctions and measures of assistance to such States. In her delegation's view, the solution to the problems of third States had two aspects. The first was the urgent need to address the economic problems resulting from sanctions, such as those faced by Turkey since the implementation of sanctions against Iraq. The second was the legal restructuring of the sanctions regime and the improvement of the working methods and procedures of the Security Council and of its sanctions committees, which were closely related to the effects of sanctions on third States. In that regard, the working paper submitted by the Russian Federation, entitled "Some observations regarding the implementation of the provisions of the Charter of the United Nations, including Article 50 on assistance to third States adversely affected by the application of the sanctions under Chapter VII of the Charter", contained some useful elements and should be discussed in depth.

38. Concerning the identification of new subjects for consideration in the future work of the Special Committee, the draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts, submitted by the Russian Federation, contained ideas which represented a step in the right direction, but which should be made more clear and concise.

39. With regard to the proposals concerning the Trusteeship Council which the Special Committee had considered at its 1996 session, abolishing the Council would require an amendment to the Charter, which would have political and legal ramifications, quite apart from the fact that amending the charter was a very complex exercise.

40. Lastly, the Special Committee remained an important United Nations body that should continue to meet annually to consider topics such as the application of sanctions and the creation of mechanisms to assist third States affected by them. Such topics were becoming increasingly important as a result of the new needs of the international community and new proposals from both Member States and the Secretary-General.

41. Mr. ŠMEJKAL (Czech Republic) said that, with regard to assistance to third States affected by the application of sanctions imposed under Chapter VII of the Charter and the status of the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council, his delegation supported the European Union position.

42. Many of the ideas contained in the proposal by Sierra Leone, entitled "Establishment of a dispute settlement service offering or responding with its services early in disputes", deserved further discussion and reflection. His delegation awaited with interest the revised version to be prepared by Sierra Leone, with the assistance of Guatemala in particular.

43. A decision concerning the future of the Trusteeship Council was not urgent; putting it on the "back burner", so to speak, would have no negative impact within the United Nations, at the financial, administrative or any other level. Moreover, it would be neither realistic nor appropriate to establish a new organ to protect the common heritage of mankind, since its functions would duplicate those of existing bodies within or outside the United Nations system.

44. Lastly, with regard to the Special Committee's future work, the working paper submitted by the Russian Federation deserved further consideration, in which his delegation was willing to participate. Opening the Special Committee to all Member States had been counter-productive, since there had been a tendency during the debate to call into question the very existence of the Committee, rather than to focusing on its revitalization. It would be paradoxical to abolish the Special Committee at a time when a vast reform of the United Nations was on the agenda. He shared the view of those delegations which favoured mandating the Special Committee to provide technical support to the working groups on United Nations reform by examining certain legal aspects of the measures envisaged by the various bodies involved, in order to strengthen coordination. However, care must be taken not to submit to it all the measures discussed in the working groups, because such a step would be superfluous in the case of proposals having no specifically legal aspects.

45. Mr. PATRIOTA (Brazil) said he agreed with other delegations, including the delegation of Portugal, that the Special Committee could play a relevant role in the process of reform currently being addressed by several working groups of the General Assembly in order to help the United Nations to adapt to current realities and prepare for the future. In that context, the possible implications for the Charter should be kept in mind.

46. As coordinator for the Subgroup on United Nations Sanctions of the Working Group of the General Assembly on An Agenda for Peace, Brazil had presided over a fruitful exchange of views that had resulted in the adoption of a provisional text (document WGAP/96/2). Although the document's main focus was the impact of sanctions on target countries (particularly their unintended side effects), procedural improvements related to the mechanics of imposing and lifting sanctions and the administration of sanctions regimes, the discussions in the Subgroup had also touched on questions related to the implementation of Article 50.

47. The report of the Secretary-General on implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions (A/51/317) made an important contribution to the consideration of questions relating to Article 50 in the Sixth Committee and the Special Committee. The report focused on specific problems including the role of the Secretariat, the methodology for a uniform and internationally recognized assessment of consequences incurred by third States, and the coordination of information about international economic or other assistance potentially available to third States. For example, the proposals listed in paragraph 15 included a positive response to several of the ideas frequently raised in various United Nations forums.

48. Brazil, which had consistently encouraged improvements in the interaction between the Security Council and other Member States, supported such measures as allowing affected States to be invited to meetings of the Security Council and its subsidiary bodies with a view to rendering Article 50 more fully operative.

49. The report also raised the important question of the development of an internationally recognized system of assessing damages, which would place the question of alleviating losses incurred by third States on a less abstract level. However, the distinctions between the direct and indirect effects of sanctions on third States and between "recurrent" and "total" losses and costs, while relevant, were necessarily related to such other key variables as the identification of an appropriate time horizon for a given assessment. While it might be difficult to reach an understanding on some of those variables, the complexity of the endeavour should not be invoked as an excuse for failing to address on an urgent basis serious problems which had a tangible impact on Member States.

50. There was an urgent need to reduce to a minimum the losses of third countries, particularly those most affected by sanctions. Ongoing and careful monitoring of the effects of sanctions on third countries had become necessary, in a framework of strict adherence to the relevant Security Council resolutions.

51. Concerning the Special Committee's future work, his delegation was interested in the proposal by the Russian Federation on basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts. Recent experience had indicated that an absence of clear principles and criteria had not helped the Organization to foster peace and security in the post-cold-war period. There was a growing perception that it must adopt a more systematic approach to deal with a new generation of conflicts. Although recognizing the limitations of the Special Committee in taking up such an ambitious project, his delegation saw merit in pursuing the Russian proposal, even if only as a possible corollary to discussions in other forums.

52. The Special Committee should pursue the discussion of the various proposals submitted to it regarding its future work at its next session, so that Member States could reach a consensus on a more sharply focused role for that important organ as part of broader efforts to revitalize the United Nations.

The meeting rose at 11.25 a.m.